

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE APRIL 6, 2010

SENATE BILL

No. 1470

Introduced by Senator Leno

February 19, 2010

An act to amend Section 5216.1 of, and to add Section 5412.5 to, the Business and Professions Code, relating to outdoor advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 1470, as amended, Leno. Outdoor advertising.

The Outdoor Advertising Act regulates placement of advertising displays adjacent to and within specified distances of highways that are part of the national system of interstate and defense highways and federal-aid highways. The act provides that lawfully erected advertising displays include displays that were erected in compliance with state laws and local ordinances in effect at the time of their erection or displays that were subsequently brought into full compliance with state laws and local ordinances. The act provides that an advertising display whose use is modified after erection in a manner that causes it to become illegal is not a lawfully erected display. The act requires compensation to be paid to the owner of a lawfully erected advertising display if the display is compelled to be removed or its customary maintenance or use is limited, except as specified.

This bill would additionally provide that an advertising display whose height, orientation, size, or technology is modified after erection in a manner that causes it to become illegal is not a lawfully erected display. The bill would provide that a lawfully erected advertising display includes displays *erected and maintained in compliance with state laws, local ordinances, and local building permit requirements in effect at*

the time of their erection and displays that were subsequently brought into, and maintained in, full compliance with state laws, local ordinances, and local building permit requirements. The bill would authorize a civil action for disgorgement of specified revenues against the owner, and any person working in concert with the owner, of a display that is not lawfully erected or that is subsequently altered in violation of any state law, local ordinance, or local building permit requirement. The bill would also make an owner of those displays liable for a civil penalty up to \$2,500 for each day the violation continues *and would require the court to consider specified factors in assessing the amount of the civil penalty*. The bill would require moneys collected pursuant to these provisions to be paid to the General Fund or to the treasurer of the city or county where a judgment is entered and to the General Fund, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5216.1 of the Business and Professions
- 2 Code is amended to read:
- 3 5216.1. “Lawfully erected” means, in reference to advertising
- 4 displays, advertising displays that were erected *and maintained* in
- 5 compliance with state laws, local ordinances, and local building
- 6 permit requirements in effect at the time of their erection or that
- 7 were subsequently brought into, and maintained in, full compliance
- 8 with state laws, local ordinances, and local building permit
- 9 requirements. The term does not apply to any advertising display
- 10 whose use, height, orientation, size, or technology is modified after
- 11 erection in a manner that causes it to become illegal. There shall
- 12 be a rebuttable presumption pursuant to Section 606 of the
- 13 Evidence Code that an advertising display is lawfully erected if it
- 14 has been in existence for a period of five years or longer without
- 15 the owner having received written notice during that period from
- 16 a governmental entity stating that the display was not lawfully
- 17 erected.
- 18 SEC. 2. Section 5412.5 is added to the Business and Professions
- 19 Code, to read:
- 20 5412.5. (a) (1) Whenever an advertising display located
- 21 anywhere in the state is not lawfully erected or whenever an

1 advertising display located anywhere in the state that was erected
 2 in compliance with state laws, local ordinances, and local building
 3 permit requirements in effect at the time of its erection is
 4 subsequently altered in violation of any state law, local ordinance,
 5 or local building permit requirement, the Attorney General, any
 6 district attorney or county counsel, or any city attorney or city
 7 prosecutor may maintain a civil action against the display owner
 8 and any person working in concert with the display owner, for the
 9 disgorgement of all gross revenues ~~with respect to the display from~~
 10 *the unlawful advertising display that are, during the time period*
 11 *the display was illegally erected or altered*, received by, or owed
 12 to, the display owner and any person working in concert with the
 13 display owner ~~while the display was illegally erected or altered~~,
 14 even if the display was subsequently brought into full compliance
 15 with state laws, local ordinances, and local building permit
 16 requirements. ~~In~~

17 (2) *In* addition to any disgorgement of gross revenues, the
 18 display owner shall be liable for a civil penalty not to exceed two
 19 thousand five hundred dollars (\$2,500) for each violation of any
 20 relevant state law, local ordinance, or local building permit
 21 requirement. Each and every day a violation exists shall constitute
 22 a separate and distinct offense. *In assessing the amount of the civil*
 23 *penalty, the court shall consider any one or more of the relevant*
 24 *circumstances presented by any of the parties to the case,*
 25 *including, but not limited to, the nature and seriousness of the*
 26 *misconduct, the number of violations, the persistence of the*
 27 *misconduct, the length of time over which the misconduct occurred,*
 28 *the willfulness of the defendant's misconduct, and the defendant's*
 29 *assets, liabilities, and net worth.*

30 (b) If an action under this section is brought by the Attorney
 31 General, the moneys collected shall be paid to the General Fund.
 32 If the action is brought by a district attorney or county counsel,
 33 two-thirds of the moneys collected shall be paid to the treasurer
 34 of the county in which the judgment was entered and one-third
 35 shall be paid to the General Fund. If the action is brought by a city
 36 attorney or city prosecutor, two-thirds of the moneys collected
 37 shall be paid to the treasurer of the city in which the judgment was
 38 entered and one-third shall be paid to the General Fund. This
 39 subdivision shall not apply to any costs awarded pursuant to
 40 subdivision (d).

1 (c) The procedures established in this section shall be in addition
2 to any criminal, civil, or other legal remedy established by law.

3 (d) Notwithstanding any other provision of law, if an action
4 results in the successful enforcement of this section, the agency
5 bringing the enforcement action may request the court to award
6 the agency its enforcement costs, including, but not limited to, its
7 reasonable attorneys' fees for pursuing the action.

8 (e) It is the intent of the Legislature that this section strengthen
9 the ability of local governments to enforce zoning ordinances
10 governing advertising displays.